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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
)  
Implementation of the Subscriber Carrier )  
Selection Changes Provisions of the )  
Telecommunications Act of 1996 )  
)  
Policies and Rules Concerning )  
Unauthorized Changes of Consumers )  
by Long Distance Carriers )

CC Docket No. 94-129

**Comments of the Rural LECs**

The Rural LECs<sup>1</sup> hereby file their Comments in response to the Common Carrier Bureau's Public Notice released April 8, 1999, DA 99-683, requesting comments on the Joint Petition for Waiver and Motion for Extension of Effective Date of Rules filed by a group of Interexchange Carriers (IXCs). Together, these pleadings seek to implement a Third Party Administrator (TPA) plan to resolve slamming complaints.

The Rural LECs agree that the liability rules are probably unworkable as adopted. They do not oppose, in principle, the creation of a third party administrator, at least insofar as it provides a more efficient and customer-friendly means of resolving complaints and functions as a clearing house for amounts owed between carriers. It is regrettable that so many public and

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<sup>1</sup> The Rural LECs are a coalition of small rural local exchange carriers (LECs), some of which also operate affiliated small IXCs. The Rural LECs filed a Petition for Reconsideration in this proceeding on March 18, 1999.

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private resources must be expended to resolve a problem which would not exist but for the unethical business practices of those IXCs who attempt to build market share by slamming. If half the effort was put into building business ethics as has been expended trying to fix problems after they occur, neither the liability rules nor the TPA would be required. Leadership by the Commission is sorely needed. In any event, the liability process should be in addition to, rather than a substitute for, the right of LECs to verify carrier changes.

The Rural LECs are all too aware that the slamming problem exists; the Rural LECS and their subscribers are among the primary victims. The Rural LECS are concerned, however, that any decision to delegate governmental functions to a private body be conducted with the utmost care and regard for the rights of all parties. In this context, it is inappropriate for the Bureau to discuss a waiver petition with the IXC petitioners over several months and then provide the rest of the industry and the public eight days to comment on over 60 pages of a complex proposal. These initial comments will, therefore, necessarily touch on only a few points and do not provide a detailed analysis.

The Rural LECS do not object to an extension or stay of the effective date of the liability rules, provided that the effective date of the prohibition on verification of preferred carrier changes by executing carriers is also extended or stayed and the Commission's finding as to Section 222(b) is vacated. The Commission justified the prohibition on verification, in part, upon its belief that its new liability rules would substantially reduce slamming and, therefore, there would be no need for LECS to verify carrier changes. If the liability rules are extended

indefinitely, the Commission should permit verification to continue by suspending the current April 27, 1999 effective date of the rule.

While the IXC petitioners have obviously spent a lot of time and effort developing their proposal, there are substantial questions which can be expected to take some time to resolve. For example, the Petition provides no discussion of the sources of the Commission's authority to delegate its adjudicatory powers to a private entity, much less a discussion of whether such delegation can be done by waiver rather than rulemaking.<sup>2</sup> However well designed, there is no point in establishing such a large undertaking in the absence of even a theory as to its legality.

It is one thing for the Commission to authorize private entities to develop a common tariff for their members and pool the resulting revenues, or to allocate numbering resources based on some objective and prescribed criteria. These functions were conducted solely by the private sector before the Commission began regulation. It is an entirely different matter, however, to grant adjudicatory powers to private entities, especially when those powers extend beyond the members of the association.<sup>3</sup> If the powers to be granted TPA do not survive judicial review because an adequate legal basis was not established, much time and expense will be wasted, and

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<sup>2</sup> The Petition does assert the TPA Board would function as an Advisory Committee which would advise the Commission on consumer and regulatory issues, but not on policy issues. Joint Petition at 17. In practice this distinction could not be ascertained. It is also not clear that such a Board would come within the requirements of the Federal Advisory Committee Act.

<sup>3</sup> The TPA would, for example, be allowed to impose a \$50 fee on non-members for processing complaints and to order LECS to change their subscribers' preferred carriers. If this fee is adopted, the Commission must make clear that it is charged to submitting, not executing carriers.

slamming will continue to harm subscribers and LECS.

An area of particular concern to small LECS and their affiliated small IXCs is the manner of choosing representation on the governing body of the TPA. The Joint Petition lacks specificity in this area. Before endorsing the TPA proposal, the Commission should permit public comment on draft bylaws and election procedures.

Petitioners suggest that LEC charges for primary carrier changes should be reduced.<sup>4</sup> Because the volume of changes handled by Rural LECS does not make full automation feasible, the current \$5 charge in the NECA tariff is, if anything, too low. In addition, the \$15 unauthorized charge is certainly too low in consideration of the substantial time requirements to resolve slamming issues.

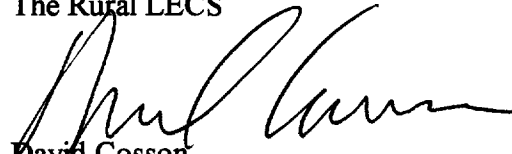
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<sup>4</sup> Joint Petition at 20, n.29.

In conclusion, while the Rural LECS endorse the concept of self-governance, such plans must be carefully developed to insure fair participation by all members of the industry and protect the rights of third parties. The extraordinarily brief process for consideration of such a complex matter makes more probable a result that is neither effective nor fair. In particular, the Commission cannot simply abdicate its statutory responsibilities by delegating to a private body controlled by IXC's the rights to dictate to LECS how services are to be provided to their subscribers.

Respectfully submitted

The Rural LECS

A handwritten signature in black ink, appearing to read 'David Cosson', written over the printed name.

David Cosson  
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April 16, 1999

## **CERTIFICATE OF SERVICE**

I, Shelley Bryce, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing "Comments of the Rural LECs", was served this 16th day of April, 1999, by first class, U.S. Mail, postage prepaid to the following parties:

  
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